

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF)
CALIFORNIA,) No. S131052
Plaintiff and Respondent,)
) Second Appellate District
v.) No. B172763
) San Luis Obispo Superior Court
JOEY R. WATSON,) No. F340614
Defendant and Appellant.)
_____)

ANSWER BRIEF ON THE MERITS

LINDA C. RUSH
State Bar No. 123626
P.O. Box 3074
Camarillo, CA 93011-3074
(805) 388-1517

Attorney for Appellant

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APPELLANT'S ANSWER BRIEF ON THE MERITS

STATEMENT OF THE CASE AND FACTS

On February 13, 2003, appellant, who was serving a state prison sentence, was transferred to Atascadero State Hospital (ASH) pursuant to Penal Code¹ section 2684 for mental health care treatment. (CT 5.) During the admission process, while exiting the shower, appellant struck Brent Hopkins, a registered nurse employed by the hospital. (CT 5-6.)

The prosecution charged appellant with violating Penal Code section 4501.5, battery by a person confined in state prison on a non-confined person. The information further alleged that appellant suffered two prior “strike” convictions and served two prior prison terms within the meaning of sections 667,

¹ All further statutory references are to the Penal Code unless otherwise specified.

subdivisions (d) and (e), 1170.12, subdivisions (b) and (c), and section 667.5, subdivision (b). (CT 15-16.)

Appellant filed a motion to set aside the information on the grounds that there was insufficient evidence to support a holding for violating section 4501.5 because appellant was not “confined” within a state prison at the time of the offense. (CT 22-26.) The court denied the motion. (CT 47.)

Appellant pled no contest to the charge and admitted one of the prior “strike” allegations. (RT 4-9.) The prosecution moved to dismiss the other prior “strike” allegation pursuant to section 1385 and the court granted the motion. The court dismissed the prior prison term allegation on its own motion. (RT 3-4, 9.)

The court sentenced appellant to the lower term of two years, doubled for the prior “strike” allegation, for a total fixed term of four years, consecutive to his present term. The court ordered victim restitution fines pursuant to sections 1202.4, in the sum of \$800, and 1202.45, in the sum of \$800, stayed, pending completion of parole. (RT 12.)

The court ordered a Certificate of Probable Cause to be issued. (RT 12, CT 60.) Appellant filed a timely notice of appeal from the judgment of conviction, giving the court of appeal jurisdiction pursuant to section 1237.5. (CT 59.)

The Court of Appeal reversed the judgment, holding it was legally impossible for appellant to have violated section 4501.5 because he was not "confined in a state prison" within the plain meaning of that statute. (Opn. at p. 6-7.) In construing the statute, the Court of Appeal held that ASH is not a "state

prison" under section 4504, subdivision (a), which provides that a person is confined in a state prison if that person is confined in one of the prisons or institutions specified in Section 5003. The court held that since ASH is not included among the prisons and institutions specified in that section it does not fall within the meaning of the statute. (Opn. at p. 4.)

The Court of Appeal also concluded that ASH is not a "state prison" under section 6082 which provides in part that references to prisons in section 4500 refers to hospitals for the confinement and treatment of persons in the "legal custody" of the Department of Corrections. The court held that because section 2684 inmates transferred to ASH are no longer in the custody of the Department of Corrections; they are in the custody of ASH, which is under the jurisdiction of the Department of Mental Health, ASH is not contemplated by the statute. (Opn. at p. 5)

The Court of Appeal further concluded that ASH does not qualify as a "state prison" under section 4504, subdivision (b), which provides in part that a prisoner is deemed confined in a prison, although at the time of the offense he is "temporarily outside its walls or bounds for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison." The court held that persons transferred to ASH did not fall within the purview of this section since " '[s]ection 2684 inmates are *transferred* to ASH, and that transfer may be permanent. Moreover, the Department of Corrections has no power to control inmates after the transfer has occurred.' " (Opn. at p. 6, Emphasis in original.)

Lastly, in an Order Modifying Opinion and Denying Rehearing, the Court of Appeal ordered the opinion be modified to include that California Administrative Code, sections 3369.1, subdivision (c) and 3360, subdivision (b), which conflict with the court's interpretation of sections 2684 and 4504, subdivision (b), do not warrant judicial deference, and are "clearly erroneous," resulting in no change in the judgment. (Order Modifying Opn. at p. 2.)

ARGUMENT

A STATE PRISON INMATE WHO IS TRANSFERRED TO A STATE HOSPITAL FOR MENTAL HEALTH TREATMENT PURSUANT TO SECTION 2684 IS NO LONGER A PERSON WHO IS "CONFINED IN A STATE PRISON" WITHIN THE MEANING OF SECTION 4501.5

A. Introduction

In this case, appellant, an inmate of the State Department of Corrections, was transferred to Atascadero State Hospital (ASH) for mental health treatment pursuant to section 2684. During the intake processing at ASH, appellant committed a battery upon an employee of ASH. This case was granted review to determine the issue of whether a state prison inmate who has been transferred to a state hospital for mental health treatment pursuant to section 2684 is a person who is "confined in a state prison" for the purpose of such offenses as battery by a person confined in state prison upon a non-confined person in violation of Penal Code section 4501.5.

B. Under the Clear and Unambiguous Language of the Relevant Statutes, a State Prison Inmate Transferred to a State Hospital for Mental Health Treatment is No Longer Under the Custody of the Department of Corrections, He is Under the Custody of the Department of Mental Health

The question presented in this case is whether appellant was "confined in state prison" for purposes of section 4501.5 at the time he committed the battery. In interpreting a statute, it is to be given the construction that will implement the intent of the legislature, and courts look first to the language of the statute to ascertain that intent. If the statutory language is clear and unambiguous, then the reviewing court must follow the plain meaning of the measure. (*People v. Sinohui* (2002) 28 Cal.4th 205, 211-212.)

Section 4501.5 provides: "Every person *confined in a state prison* of this state who commits a battery upon the person of any individual who is not himself a person confined therein shall be guilty of a felony and shall be imprisoned in the state prison for two, three, or four years, to be served consecutively." (Emphasis added.)

For purposes of section 4501.5, section 4504, subdivisions (a) and (b), provides two definitions of "confined in state prison." Subdivision (a), of section 4504 provides: "A person is deemed confined in a 'state prison' if he is confined in any of the prisons and institutions specified in section 5003 by order made pursuant to law, including, but not limited to, commitments to the Department of Corrections or the Department of the Youth Authority, regardless of the purpose

of such confinement and regardless of the validity of the order directing such confinement, until a judgment of a competent court setting aside such order becomes final." Section 5003² does not include ASH or any other state hospitals among the list of prisons or institutions specified. Nonetheless, respondent argues that ASH is included within the definition of "prisons" under section 6082 and, therefore, comes within the purview of section 4501.5. (ROB 11) Respondent is incorrect.

Section 6082 provides: "References in this title and in Title 5 (commencing with Section 4500) to prisons refer to all facilities, camps, hospitals and institutions for the confinement, treatment, employment, training and discipline of *persons in the legal custody of the Department of Corrections.*" (Emphasis added.) While section 6082 clearly recognizes that prisoners will, at times, be in other places for various allowable purposes, under the plain language of the statute

² Section 5003 provides: The department has jurisdiction over the following prisons and institutions: (a) The California State Prison at San Quentin. (b) The California State Prison at Folsom. (c) The California Institution for Men. (d) The California Institution for Women. (e) The Deuel Vocational Institution. (f) The California Medical Facility. (g) The Correctional Training Facility. (h) The California Men's Colony. (i) The California Correctional Institution at Tehachapi. (j) The California Rehabilitation Center. (k) The California Correctional Center at Susanville. (l) The Sierra Correctional Center. (m) The Richard J. Donovan Correctional Facility at Rock Mountain. (n) Mule Creek State Prison. (o) Northern California Women's Facility. (p) Pelican Bay State Prison. (q) Avenal State Prison. (r) California State Prison – King's County at Corcoran. (s) Chuckawalla Valley State Prison. (t) Those other institutions and prison facilities as the department of Corrections or the Director of Corrections may be authorized by law to establish, including, but not limited to, prisons in Madera, Kern, Imperial and Los Angeles Counties.

the legislature it limits the class of places designated as "prisons" to those for the confinement, treatment, employment, training and discipline of "*persons in the legal custody of the Department of Corrections.*" Thus, section 6082 evidences a legislative intent to qualify the "prison" concept not only by the character of the place and purpose but also by the character of the agency having legal custody of the particular inmate.

Under the first definition of section 4504, the question of whether an inmate transferred from state prison to a state hospital pursuant to section 2684 is "confined in state prison" for purposes of section 4501.5, therefore, turns on which agency has legal "custody." In *People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, where the defendant was transferred to ASH pursuant to section 2684 and was charged with violating section 4573.6³, the court defined the term "custody" as follows: "The *care and control* of a thing or person...Also the detainer of a man's person by virtue of lawful process or authority. [¶] The term

³ Section 4573.6 provides: "Any person who knowingly has in his or her possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the state are located under the custody of prison officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any jail, road camp, farm, place or institution, any controlled substances... any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming controlled substances, without being authorized to so possess the same by the rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm or place is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years..."

is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession... (Black's Law Dict. (6th ed.1990) p.384.)." (*Id.* at p. 1000, emphasis added.) Thus, the definition of "custody" in the context of imprisonment includes either actual physical custody or the *legal right to care for and control* an individual who may be located elsewhere.

Here, it is undisputed that appellant was not in the actual physical custody of the Department of Corrections. To determine whether appellant was in the legal custody of the Department of Corrections, section 2684 must be examined.

Section 2684, subdivision (a), provides: "If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from *care* and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her *until in the opinion of the superintendent* the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital." (Emphasis added.)

Section 2685 further provides: "*When in the opinion of the superintendent the mentally ill...prisoner has been treated to such an extent that such person will not benefit by further *care* and treatment in the state hospital, the superintendent shall immediately notify the Director of Corrections of that fact. The Director of Corrections shall immediately send for, take and receive the prisoner back into prison...*" (Emphasis added.)

The language in sections 2684 and 2685 is clear and unambiguous: a prisoner is transferred for *care*, and once that transfer takes place the superintendent of the state hospital has the exclusive authority to *control* when, if ever, the prisoner has been treated to such an extent that he or she will not benefit by further care and will be returned to prison. Under these statutes, the state hospital is conferred with all rights and responsibilities attributable to one with "custody" over another. Read together, sections 6082 and 2684 form a legislative classification of state hospitals as something other than a "prison" for the purpose of classifying those prisoners not in the custody of the Department of Corrections.

Under the second definition of "confined in state prison," section 4504, subdivision (b), provides: "A person is deemed 'confined in' a prison although, at the time of the offense, he is temporarily outside its walls or bounds for the purpose of serving on a work detail or for the purpose of confinement in a local correctional institution pending trial or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison..."

Respondent argues that persons transferred pursuant to section 2684 come within

the purview of the latter, catch-all category of "any other purpose." (ROB 10)

Respondent is wrong.

Under the plain and ordinary meaning of the language of the statute, section 4504, subdivision (b), merely provides for the Department of Corrections to retain custody of prisoners in those instances where they are temporarily allowed outside of prison for a legitimate purpose. In addition to those instances specified in the statute, prisoners are allowed outside of prison for such other purposes as attendance at schools for educational or vocational training purposes or hospitalizations for medical treatment. (See e.g. §2690 [removal for purpose of attending college classes or medical treatment; §2692 [removal for purpose of housing, care, and treatment of inmates afflicted with acquired immune deficiency syndrome (AIDS) or AIDS-related complex (ARC)].) In these instances, because the prisoner's absence from prison is only temporary, and because the prisoner is going to facilities and environments that do not provide the same level of security as is provided within the prison system, there is an ongoing need for the Department of Corrections to retain control over the prisoner.

In contrast, section 2684 recognizes that there will be prisoners who are so seriously mentally ill that they cannot be properly treated within the Department of Corrections system and will need to be transferred to a state hospital under the Department of Mental Health for more specialized mental health treatment. Under these circumstances, the prisoner is being transferred to a secured, prison-like facility, and under the plain language of the statute, the prisoner is not merely

being "temporarily allowed" outside of prison, he or she is being transferred, and that transfer may be permanent. Under these conditions, it is only logical that the Legislature contemplated that the need to control the prisoner's behavior through the continued custody by the Department of Corrections is no longer applicable.

Under the statutory scheme of section 2684, the Legislature acknowledges the fact that the state Department of Mental Health is an autonomous state agency whose purpose is to provide secure, prison-like custodial facilities for the treatment of the seriously mentally ill, including criminal offenders, and, therefore, it should be conferred with all the rights and duties related to the custody of its criminal population, including those offenders transferred pursuant to section 2684. That the Legislature intended to confer sole custodial rights and responsibilities to the Department of Mental Health is evinced in Welfare and Institutions Code section 4027. That section provides: "The State Department of Mental Health may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders receiving treatment pursuant to Sections 1026, 1026.2, 1364, 1370, 1610, and 2684 of the Penal Code, Section 1756 of the Welfare and Institutions Code, persons receiving treatment as mentally disordered sex offenders, and inmates of jail psychiatric units."

This legislative scheme makes sense when comparing persons transferred to state hospitals under section 2684 to other persons within the criminal justice system who are directly committed to state hospitals by court order and who are

not subject to section 4501.5 and other provisions in section 4500. (See e.g., section 1026 [defendant found to have been insane at the time an offense was committed ordered committed]; section 1368 [mentally incompetent when a question of sanity arises prior to judgment]; section 3700 [prisoners under sentence of death and found to be insane]; section 2960 [prisoners found to be insane upon expiration of prison sentence]; and Welfare and Institutions Code section 6601 [sexually violent predators ordered committed to state hospital].)

If the respondent's position in this case were correct, then the only class of mentally ill offenders in state hospitals subject to section 4501.5 and other provisions of section 4500 would be those persons transferred pursuant to section 2684. This not only raises an equal protection violation (Cal. Const. Art. I, § 7(a) & U.S. Const. 14th Amend.), but is inconsistent and illogical with the other statutes applying to the mentally ill criminal population confined in state hospitals.

Also to support its argument that section 2684 transferees are contemplated within section 4501.5, respondent argues that because section 2685⁴ provides credit toward the 2684 transferee's sentence for the time spent in a state hospital,

⁴ Section 2685 provides: Upon the receipt of a prisoner, as herein provided, the superintendent of the state hospital shall notify the Director of Corrections of that fact, giving his name, the date, the prison from which he was received, and from whose hands he was received. When in the opinion of the superintendent the mentally ill...prisoner has been treated to such an extent that such person will not benefit by further care and treatment in the state hospital, the superintendent shall immediately notify the Director of Corrections of that fact. The Director of Corrections shall immediately send for, take and receive the prisoner back into prison. The time passed at the state hospital shall count as part of the prisoner's sentence.

the Department of Corrections must retain custody. (ROB 9.) Respondent is mistaken.

Section 2685 is simply part of an overall "legislative policy that insane prisoners receive credit on their terms while undergoing treatment in state hospitals." (*In re Bennett* (1969) 71 Cal.2d 117, 120.) This meaning is consistent with other commitments for which prisoners are given credit against their sentences for time spent in a state hospital. For example, under section 1375.5, persons declared mentally incompetent receive credit on their terms for time spent in a state hospital as a result of a court commitment pursuant to sections 1370 or 1370.1; under section 1026.5, persons committed to state hospitals may not be kept in actual custody longer than the maximum term of confinement less credits pursuant to section 2900.5; and under section 1601, time spent in a locked facility must be credited as actual custody. By providing credits while spending time in state hospitals, the legislature has reasonably sought to prevent arbitrary discriminations involving mentally ill prisoners and has no bearing on the question of whether the Department of Corrections retains "custody" of a section 2684 transferee.

C. Even if the Language of the Statutes Support More than One Reasonable Construction, the Conclusion that Comports Most Closely with the Apparent Intent of the Legislature is that a State Prison Inmate Transferred to a State Hospital Pursuant to Section 2684 is No Longer "Confined in State Prison" for Purposes of Section 4501.5

Where the language of a statute supports more than one reasonable construction, the court may consider a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. (*People v. Flores* (2003) 30 Cal.4th 1059, 1063; *People v. Sinohui, supra*, 28 Cal.4th 205, 211-212.) The court then selects the construction that comports most closely with the apparent intent of the Legislature, “with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” (*Sinohu, supra*, 28 Cal.4th 205, 211-212.)

Assuming for the sake of argument that the statutes are subject to more than one construction, respondent's view would defeat, rather than promote the general purposes and cause absurd results. The purpose of section 2684 is to expedite the rehabilitation of those prisoners suffering from mental illness by transferring them to state hospitals in the Department of Mental Health where they can receive better care and treatment than that provided within the Department of Corrections. On the other hand, the purpose of section 4501.5 is to protect the guards and other inmates of the prison. (*People v. Lopez* (1969) 1 Cal.App.3d 672, 681.)

Applying the directives of statutory construction, in view of the general purposes of the statutes, appellant fails to see how either purposes would be served by making section 4501.5 applicable to mentally ill prisoners transferred from prison to state hospital. Moreover, construing the statute as such would lead to the

absurd consequence of two state agencies having jurisdiction over the transferred prisoner at the same time. Because each agency has its own set of rules and regulations, if their custody were to overlap, the state hospitals would be faced with the task of having to obtain permission from the Department of Corrections whenever dealing with this one subgroup of its mentally ill offender population. Such a result is not only impractical, but would unreasonably interfere with the care and treatment of the transferred prisoner by the state hospital.

Respondent argues, however, that "the best evidence" is that the Legislature intended for persons transferred pursuant to section 2684 to be subject to prosecution under section 4501.5 because they were not expressly exempted. (RB 13) In support of this proposition, respondent compares Welfare and Institutions Code section 7301⁵, which provides for the transfer of persons committed to a

⁵ Welfare and Institutions Code section provides in part: "Whenever, in the opinion of the Director of Mental Health and with the approval of the Director of Corrections, any person who has been committed to a state hospital pursuant to provisions of the Penal Code or who has been placed in a state hospital temporarily for observation pursuant to, or who has been committed to a state hospital pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of this code needs care and treatment under conditions of custodial security which can be better provided within the Department of Corrections, such person may be transferred for such purposes from an institution under the jurisdiction of the State Department of Mental Health to an institution under the jurisdiction of the Department of Corrections. [¶] Persons so transferred shall not be subject to the provisions of Section 4500, 4501, 4501.5, 4502, 4530, or 4531 of the Penal Code. However, they shall be subject to the general rules of the Director of Corrections and of the facility where they are confined and any correctional employee dealing with such persons during the course of an escape or attempted escape, a fight or a riot, shall have the same rights, privileges and immunities as if the person transferred had been committed to the Director of Corrections..."

state hospital pursuant to provisions of the Penal Code from an institution under the jurisdiction of the State Department of Mental Health to an institution under the jurisdiction of the Department of Corrections and specifically exempts such persons so transferred from the provisions of sections 4500, 4501, 4501.5, 4502, 4530, or 4531.

Welfare and Institutions Code section 7301 neither requires nor tends toward the conclusion drawn by respondent. In construing section 7301 (formerly §6700.5), the court in *People v. Lopez, supra*, 1 Cal.App.3d 672, reviewed the legislative history of the section and the language of the statute, and concluded that section 6700.5 was enacted and later amended to "recognize and ratify" that persons committed to an institution under the Department of Mental Health could be committed to an institution under the Department of Corrections "by administrative agreement," and that the exemption in the statute was "logical" to "temper authority for such administrative action with an immunity from the consequences which ordinarily follow a court commitment to a prison." (*Id.* at p. 680.)

Thus, the exemption in section 7301 arose from a need to "temper" or make acceptable the authority of those administrative transfers of persons who are originally committed to confinement at a state hospital, and, hence, not subject to the prison safety laws in section 4500, but who are subsequently committed to state prison by administrative transfer. The exemption, however, does not apply to those persons who are transferred from an institution under the Department of

Mental Health to an institution under the Department of Corrections who are initially confined under the jurisdiction the Department of Corrections and transferred back.

The legislative scheme in this area is consistent with the legislative scheme of section 2684 since under section 2684 when persons transferred to state hospitals are transferred back to state prison they are then back under the jurisdiction of the Department of Corrections and, hence, subject to the prison safety provisions of section 4500. Moreover, because the administrative transfer is going in the opposite direction, and persons confined state hospitals are already not subject to the prison safety provisions of section 4500, there is no need to "temper" the transfer by providing an explicit exemption.

Respondent also argues that sound public policy supports the interpretation that persons transferred to ASH pursuant to section 2684 may be prosecuted under section 4501.5 to promote the safety and well-being of ASH employees. (RB 15.) Appellant disagrees.

Section 4501.5 is one of a series of penal provisions in section 4500 to control the behavior of prisoners in prison and while temporarily allowed outside of prison. The purpose of section 4501.5 and related provisions is to promote *prison* safety. (*In re Smith* (1966) 64 Cal.2d 437, 440, *People v. Wells* (1949) 33 Cal.2d 330, 336, overruled on other grounds, *People v. Lopez, supra*, 1 Cal.App.3d 672.) It is illogical that the goal of *prison* safety will be promoted by making the statute applicable to one subgroup of persons confined in state

hospitals. Thus, while appellant does not disagree that security at state hospitals is also a reasonable public policy, under the statutes this policy cannot be applied to state hospitals.

Applying the public policy of prison safety to the state hospitals would disregard the clear and unambiguous language of the statute, as well as the legislative scheme, that evinces a legislative intent to confer legal "custody" of mentally ill offenders, including persons transferred pursuant to section 2684, to the Department of Mental Health. To construe the statutes as respondent argues would defeat this purpose, cause overlapping jurisdiction of two state agencies, and result in the application of two sets of rules and regulations as to one segment of the state hospital population. Clearly, this does not make sense and is completely impractical.

Finally, if this court were to find that the statutes were susceptible more than one reasonable construction, the statutes should be construed in appellant's favor. ("[U]nder the traditional 'rule of lenity,' language in a penal statute that truly is susceptible of more than one reasonable construction in meaning or application ordinarily is construed in the manner that is more favorable to the defendant. [Citations omitted.]" (*People v. Canty* (2004) 32 Cal.4th 1266, 1277.))

D. Department of Corrections Regulations in Conflict with the Department of Mental Health's Custodial Rights of Persons Transferred to State Hospitals Pursuant to Section 2684 is Clearly Erroneous and Does Not Warrant Judicial Deference

Respondent urges this court to defer to two regulations of the Department of Corrections that conflict with the unambiguous language of the statutes. One regulation provides, "Inmates and parolees housed in Department of Mental Health hospitals [pursuant to section 2684] remain under the jurisdiction of the department and shall not be permitted to leave the hospital grounds without the specific authorization of the director." (Cal. Admin. Code, tit., §3369.1, subd. (c).) The term "department" means the Department of Corrections, and the term "director" means the Director of the Department of Corrections. (*Id.*, §3000.)

The other regulation provides: "When an inmate is found to require mental health care not available within these resources, but which is available in the Department of Mental Health, the case will be referred to the director for consideration of *temporary* transfer to that department pursuant to Penal Code section 2684." (*Id.*, 3360, subd. (b), italics added.) The Court of Appeal acknowledged, "[t]hese regulations indicate that the Department of Corrections views inmates transferred to ASH pursuant to section 2684 as being "temporarily outside the walls or bounds of the prison" within the meaning of section 4504, subdivision (b).

Government Code section 1342.2 provides that "[w]hen by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulations adopted is valid or effective unless [1] consistent and not in

conflict with the statute [2] reasonably necessary to effectuate the purpose of the statute."

"Administrative regulations that involve an agency's interpretation of a statute are ' "...entitled to consideration and respect by the courts' [citation]...(*Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1264.) But such ' "agency interpretations are not legal or ...authoritative" [Citation.] "Courts must, in short, independently judge the text of [a] statute..." [Citation.]...[T]he degree of deference accorded [to the agency's interpretation] should be dependent in large part upon whether the agency has a " ' comparative interpretative advantage over the courts' "and on whether it has arrived at the correct interpretation. [Citation.] (*Id.*, at pp. 1264-1265; see also *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-12.)." (Order Modifying Opn. at p. 2.)

Respondent argues that the regulations establish that it is the administrative experience of the Department of Corrections that persons transferred pursuant to section 2684 are temporary and not permanent. However, whether the Department of Corrections view that more persons transferred pursuant to section 2684 are temporary than permanent is of no significance under the statutory scheme which clearly provides for a permanent transfer, and in any event, the regulations are in conflict with the clear and unambiguous language of the statute conferring sole custody to the Department of Mental Health upon the transfer. Additionally, as the Court of Appeal in this case concluded: this argument fails to establish that the

Department of Corrections has special expertise or technical knowledge giving it a " ' "comparative interpretive advantage over the courts." ' " (*Bonnell v. Medical Bd. of California, supra*, 31 Cal.4th 1255, 1265.) (See Order Modifying Opn. at p. 2.)

Moreover, "in light of the unambiguous language of the statute[s]," the Department of Correction's interpretation is "incorrect," and under such circumstances no judicial deference is to be given to an interpretation that is " 'clearly erroneous.' [Citations.] (*Ibid.*)." (See Order Modifying Opn. at p. 2)

CONCLUSION

For the foregoing reasons, appellant was not "confined in a state prison" at the time of the offense and, therefore, was not subject to prosecution under section 4501.5. As such, appellant respectfully requests that the Court of Appeal's judgment be affirmed and that his conviction be reversed.

Dated: September 6, 2005

Respectfully submitted,

LINDA C. RUSH
Attorney for Appellant
Joey R. Watson

CERTIFICATE OF APPELLATE COUNSEL

PURSUANT TO RULE 28.1 (e)(1) OF THE CALIFORNIA RULES OF COURT

I, Linda C. Rush, appointed counsel for appellant, hereby certify, pursuant to rule 28.1(e)(1) of the California Rules of Court, that I prepared the foregoing Answer Brief on the Merits on behalf of my client using a 13 point Times New Roman font and that the word count for this Answer Brief is 4,728, which does not include the cover or the tables. This Answer Brief on the Merits therefore complies with the rule, which limits briefs to 14,000 words.

Dated: September 6, 2005

Linda C. Rush
Attorney for Appellant
Joey R. Watson

PROOF OF SERVICE BY MAIL

I declare that I am a resident of the County of Ventura; I am over the age of eighteen years and not a party to the within entitled action; my business address is P.O. Box 3074, Camarillo, California 93011-3074. I served one copy of the attached:

ANSWER TO PETITION FOR REVIEW

on the following, by placing same in an envelope addressed as follows:

Office of the State Attorney General
300 South Spring Street
Los Angeles, Ca 90013

California Appellate Project
520 S. Grand Avenue, 4th Floor
Los Angeles, Ca 90017

Clerk of the Superior Court
c/o Hon. Barry T. LaBarbera
San Luis Obispo Superior Court
County Government Center
1050 Monterey Street, Rm 93408
San Luis Obispo, Ca 93408

Clerk of the Court of Appeal
Second Appellate District,
Division Six
200 East Santa Clara Street
Ventura, Ca 93001

A copy was also mailed this day to appellant.

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Camarillo, California on September 6, 2005.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on September 6, 2005, at Camarillo, California.

LINDA C. RUSH